

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

KEVIN MATHIS, #06134-078	§	
VS.	§	CIVIL ACTION NO. 6:06cv463
UNITED STATES OF AMERICA	§	CRIM. NO. 6:02cr86(1)

ORDER OF DISMISSAL

The above-entitled and numbered civil action was heretofore referred to United States Magistrate Judge Judith K. Guthrie, who issued a Report and Recommendation concluding that Mathis' motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 should be denied. Mathis has filed a motion for reconsideration, which is construed as objections.

The Report of the Magistrate Judge, which contains her proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Mathis to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections by Mathis are without merit. More specifically, Mathis' allegation that the plea agreement was violated because the Government did not file for a downward departure lacks merit. The plea bargain did not promise him a downward departure. It should be noted, however, that the Government actually filed two motions to reduce the sentence, which were granted. Relief should also be denied because of the waiver paragraph in the plea agreement and because the motion is time-barred. Finally, Mathis' claim in his objections that he should be entitled to relief because the Government's response was untimely lacks merit. The Court would add that the Government explained that the response was filed late because it misunderstood the need for a response since it had filed two motions for a downward departure, which were granted. In short, Mathis' claim that he is entitled to relief because he did not receive a downward departure simply lacks any basis in fact. Therefore the Court hereby

adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that Mathis' motion to vacate, set aside or correct his sentence is **DENIED** and the cause of action is **DISMISSED** with prejudice. It is further

ORDERED that a certificate of appealability is **DENIED**. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

So ORDERED and SIGNED this 26th day of February, 2007.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE